

Raymond S. Hartman, Ph.D. Confidential - Attorneys' Eyes Only
AM Session Boston, MA

October 7, 2004

41 (Pages 158 to 161)

<p style="text-align: right;">158</p> <p>1 few more questions on this line, and then 2 I will be happy to break for lunch? 3 MR. SOBOL: Very well. It is up 4 to -- 5 BY MR. EDWARDS: 6 Q. You take a look at paragraph 10B of your 7 declaration, and I want to direct your 8 attention in particular to something you 9 say on page 7. 10 (Witness complying.) 11 Q. Do you have that in front of you? 12 A. I do. 13 Q. In the last sentence of the second bullet, 14 you say, "Absent information on the actual 15 ASP, end payers depend on AWP to decide 16 the competitive value of a drug relative 17 to alternative therapies." 18 What do you mean by "competitive 19 value" there? 20 A. What I mean by competitive value is that 21 patients and doctors come to 22 pharmaceuticals and make decisions on</p>	<p style="text-align: right;">160</p> <p>1 manufacturer feels covers all costs, 2 whatever they happen to be. 3 Q. Competitive value means the price they 4 should pay? 5 A. The competitive value means both the costs 6 built in and reflected per unit of the 7 drug sold over time, manufacturing costs, 8 R & D, everything that is amortized. 9 These manufacturers are willing to sell it 10 on average for a given average sale price. 11 It reflects their strategy. That is what 12 they are willing to offer it at. 13 Q. You say absent -- 14 A. I am saying that's what the -- those are 15 the lower prices that consumers, in a 16 normal market, where there is not a 17 reimbursement regime, consumers can 18 respond to that, that lower ASP. 19 Q. Well -- 20 A. They don't. 21 They see an AWP for a 22 multisource branded drug, let's say, that</p>
<p style="text-align: right;">159</p> <p>1 which -- which pharmaceutical they are 2 going to use, which therapeutic substitute 3 they're going to use, which generic 4 they're going to use, and they make those 5 decisions thinking about the cost to them, 6 what they are going to be reimbursing -- 7 reimbursing for that drug. And so an 8 example again would be multisource branded 9 drugs after generic launch. 10 End payers are deciding on 11 whether to stick with the branded 12 multisource drug, and they don't know that 13 the ASP has dropped 80 or not, 50, 14 60 percent. They are still looking at an 15 AWP. They are making decisions on whether 16 -- looking at a clinical profile, and 17 looking at the cost of a drug, working 18 with their health plan. They're going to 19 make decisions about the competitive 20 value, what the competitive value means, 21 whatever the pricing has been built into 22 that drug by the manufacturer, that the</p>	<p style="text-align: right;">161</p> <p>1 goes up, such that you see the prices to 2 the intermediaries going down by 3 50 percent, and you are seeing the 4 reimbursement rates paid by the consumers 5 going up, and so what I am saying is they 6 are looking at the AWP saying, oh, this 7 has some meaning, both for value to me, 8 clinical profile, value to me, cost to my 9 insurer, and it is also reflecting the 10 costs of bringing this drug to market. 11 Q. Doesn't it follow from what you say here 12 that if a class member has information on 13 ASP or actual ASP, they will be able to 14 determine the competitive value of the 15 drug? 16 A. You are -- you have just asked me the same 17 question that you have asked me 10 times. 18 Q. And the answer to that is yes? 19 A. The answer is that that class member will 20 be impacted. There will be causation. 21 They -- given their -- given their -- what 22 they know, and given that their position</p>

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<p style="text-align: right;">162</p> <p>1 and the information that they know, they</p> <p>2 may be able to mitigate against the</p> <p>3 overcharges, but that will be reflected in</p> <p>4 the quanta of the overcharge to them.</p> <p>5 Q. Well, you --</p> <p>6 MR. SOBOL: Well, let's take a</p> <p>7 lunch break now. It has gotten late. I</p> <p>8 have people waiting for 11 minutes on a</p> <p>9 conference call.</p> <p>10 MR. EDWARDS: Okay. Let me just</p> <p>11 ask one more question then.</p> <p>12 BY MR. EDWARDS:</p> <p>13 Q. Is it fair to say, Dr. Hartman, that you</p> <p>14 have not made any systematic effort to</p> <p>15 date to determine the extent to which</p> <p>16 class members have information on the</p> <p>17 actual ASP? Correct?</p> <p>18 MR. SOBOL: Objection to the</p> <p>19 form.</p> <p>20 You may answer.</p> <p>21 A. The -- in terms of the systematic effort</p> <p>22 of quantifying and sampling the variety of</p>	<p style="text-align: right;">164</p> <p>1 1:12 p.m.)</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">163</p> <p>1 end payers to see what they knew and the</p> <p>2 extent to which they were injured is</p> <p>3 something that I have proposed in the last</p> <p>4 page of this declaration that needs to be</p> <p>5 done during the damage phase. I have</p> <p>6 started looking at contracts. I have</p> <p>7 started reading depositions. But it is by</p> <p>8 no means complete, and it has to be looked</p> <p>9 at to deal with the quanta of the injury</p> <p>10 and damages once aggregate damages are</p> <p>11 determined.</p> <p>12 Q. And you can think of no circumstances --</p> <p>13 MR. SOBOL: Are we taking a</p> <p>14 lunch break now? I have got people</p> <p>15 waiting. All right? And you just keep on</p> <p>16 going, so now we're stopping.</p> <p>17 MR. EDWARDS: Two o'clock?</p> <p>18 MR. SOBOL: Well, 2:12.</p> <p>19 Hopefully two o'clock, but again I have</p> <p>20 this conference call that people are</p> <p>21 waiting on.</p> <p>22 (Luncheon recess taken at</p>	<p style="text-align: right;">165</p> <p>1 Commonwealth of Massachusetts</p> <p>2 Plymouth, ss.</p> <p>3</p> <p>4 I, Judith McGovern Williams, a</p> <p>5 Registered Professional Reporter and</p> <p>6 Notary Public in and for the Commonwealth</p> <p>7 of Massachusetts, do hereby certify:</p> <p>8 That RAYMOND S. HARTMAN, Ph.D.,</p> <p>9 the witness whose deposition is</p> <p>10 hereinbefore set forth, was duly sworn by</p> <p>11 me and that such deposition is a true</p> <p>12 record of the testimony given by the said</p> <p>13 witness.</p> <p>14 IN WITNESS WHEREOF, I have</p> <p>15 hereunto set my hand this day of</p> <p>16 , 2004.</p> <p>17</p> <p>18 Judith McGovern Williams</p> <p>19 Registered Professional Reporter</p> <p>20 Certified Realtime Reporter</p> <p>21 Certified Shorthand Reporter No. 130993</p> <p>22</p> <p>My Commission expires:</p> <p>April 2, 2010</p>

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